BRUNEI REPORTS

Zuslie bin Ibrahim v Public Prosecutor

HIGH COURT (BRUNEI) — CRIMINAL APPEAL NO 25 OF 1992
ROBERTS CJ
19 JANUARY 1993

Criminal Procedure *— Plea of guilty — Appeal — Whether appellant could put forward a different version of what occurred*

Criminal Law *— Possession of offensive weapon without authority — Public Order Act (Brunei) s 29(1)*

The appellant was charged with possession of an offensive weapon, an offence punishable under s 29(1) of the Public Order Act (Brunei). The appellant pleaded guilty in the magistrates' court but sought leave to enter an appeal and to put forward a different version of what occurred. The question also arose as to whether the finding of an offensive weapon inside a motorcar can be said to be possession of the weapon in a public place.

Held, dismissing the appeal:
(1) To permit the appellant to put forward an entirely different version of what occurred would be wrong.
(2) If an offensive weapon is found in a public place, it does not matter if it is contained in a motorcar or in a piece of equipment which is itself in a public place.

Per curiam:
If offensive weapons are found in a public place, the burden will shift to the appellant to establish that he had the weapon in his possession or under his control for a lawful purpose. This burden he must discharge on a balance of probabilities and not beyond a reasonable doubt.

Notes
For cases on possession of offensive weapon under the Public Order Act (Brunei), see 4 *Mallal's Digest* (4th Ed) paras 1731 and 1733.

Cases referred to
1 *Evan v Hughes* [1972] 3 All ER 412 (refd)
2 *Mansfield v Kelly* [1972] VR 744 (refd)
3 *McKenzie v Stratten* [1971] VR 848 (refd)
4 *R v Allamby* [1974] 3 All ER 126 (refd)
5 *R v Cugullere* [1961] 2 All ER 343 (refd)
6 *R v Petrie* [1961] 1 All ER 466 (refd)
7 *R v Edmonds* [1963] 1 All ER 828 (refd)

A *Ivan Leong* (*Deputy Public Prosecutor*) for the Public Prosecutor.
David Clidero (*Clidero & Lee*) for the appellant.

Roberts CJ: The appellant, Zuslie bin Ibrahim, was charged with possession of an offensive weapon at about 0020 hours on 6 September 1992. The
B weapon consisted of two daggers of unequal length in a concealed case. They were found by the police in the appellant's motorcar when the motorcar was stopped by the police. He was charged with an offence punishable under s 29(1) of the Public Order Act.

Originally, I set this case down in revision because it seemed to me that there was a point of law which should be decided. Shortly afterwards,
C however, the appellant sought leave to enter an appeal and, with the concurrence of the public prosecutor, this appeal was substituted for the revision so that the appellant was able to address me first.

When the matter came before the magistrate, the charge was read and explained to the appellant in Bahasa Malaysia. I can only assume from this,
D and it appears in the record, that the essential ingredients of the offence were put before him. The appellant pleaded guilty, having said that he understood the charge. The facts were then put in front of the court by the prosecuting officer who described how a team of detectives stopped a car driven by the appellant at 0020 hours on 6 September. When the car was searched, the police officers found the two daggers, which are specified in
E the charge, beside the driver's seat. When questioned, the appellant admitted that the two daggers belonged to him. In mitigation, he said: 'I brought the daggers with me to protect me from being attacked. Before that evening, my car had been sabotaged.'

The magistrate found that this was not a lawful purpose, though he did
F so when the appellant had already pleaded guilty. It is hardly surprising but he did so find, since the possibility of using an offensive weapon to protect yourself is not a defence to a charge under s 29 of the Public Order Act. (See *Evan v Hughes.*[1])

According to his petition of appeal, although he pleaded guilty in front of a magistrate, the appellant seeks leave to put forward another story,
G namely that he took these weapons away from his younger brother intending to dispose of them but did not find a satisfactory method of doing so.

To permit the appellant, at this stage, to put forward an entirely different version of what occurred, would in my view be wrong, since he not only admitted that the daggers were his but said clearly to the magistrate that he
H took them with him to protect himself from attack. He never mentioned his brother either to the police or to the magistrate.

There remains, however, the question of whether it can be said that the finding of an offensive weapon inside a motorcar, which is itself in a public place, can be said to be possession of the weapon in a public place.

The authorities make it clear that the driver of the car must, in any event,
I know of the presence of an offensive weapon in the car before he can properly be convicted. There is no suggestion that in this case the appellant was ignorant of the presence in the car driven by him of the weapons, nor that he was not in possession of the offensive weapons when they were discovered in the car.

A number of cases, both English and Australian, support the view that an offensive weapon which is found inside a motorcar, which is itself in a public place, is possession of that weapon in a public place. There are two Australian cases, of which the full reports are not available to me, namely, *Mansfield v Kelly*[2] and *McKenzie v Stratten*,[3] which said that the interior of a motorcar or of a taxi-cab constituted a public place. The English cases, namely, *R v Allamby*,[4] *R v Cugullere*,[5] *R v Petrie*[6] and *R v Edmonds*[7], all by implication decide that a motorcar, which is itself in a public place, can be regarded as a public place for the purposes of the Prevention of Crime Act, the relevant section of which is in the same terms as the Brunei Public Order Act. It would, indeed, be unrealistic to find differently. If, for example, an offensive weapon was concealed in the inside pocket of a person, or in a brief case carried by him, although it could not be said that either the pocket or the brief case was a public place, each was in a public place at the time when the offensive weapon was found.

In my view, the container does not matter. If an offensive weapon is found in a public place, as this is defined in the Public Order Act, it does not matter if it is contained in a motorcar or in a piece of equipment which is itself in a public place. Thus, daggers which are found in a motorcar in a public street or weapons found in a bus, brief case or on the person in a public place, will all be offensive weapons in a public place, if they are carried at the time when they are found in a public place.

It has been the custom of police officers to stop and search motorcars for offensive weapons in a public place, as this is defined in the Public Order Act. This seems to me to be an entirely proper course to take. If offensive weapons are found in a motorcar in a public place, the burden will shift to the appellant to establish that he had the weapon in his possession or under his control for a lawful purpose. This burden he must discharge on a balance of probabilities and not beyond a reasonable doubt.

I can find no merit in this appeal and must, therefore, dismiss it.

Appeal dismissed.

Reported by Jeanne Tan